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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,383	03/04/2002	Maria Laura Gennaro	20869-8	7070
	7590 09/16/200 KET ADMINISTRAT			
LOWENSTEIN SANDLER PC 65 LIVINGSTON AVENUE			SWARTZ, RODNEY P	
ROSELAND, N	-		ART UNIT	PAPER NUMBER
			1645	
			MAIL DATE	DELIVERY MODE
			09/16/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

		Application No.	Applicant(s)			
Office Action Summary		10/009,383	GENNARO, MARIA LAURA			
		Examiner	Art Unit			
		Rodney P. Swartz, Ph.D.	1645			
Period fo	The MAILING DATE of this communication ap or Reply	pears on the cover sheet with the c	correspondence address			
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).						
Status						
1) \	Responsive to communication(s) filed on 14 A	April 2008				
, —	· · · · · · · · · · · · · · · · · · ·	s action is non-final.				
3)	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is					
٥/ك	closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.					
	·	2. parte Quayre, 1000 0.2. 11, 10	30 3.3.2.0.			
Disposit	on of Claims					
4)🛛	☑ Claim(s) <u>3-7,9 and 10</u> is/are pending in the application.					
	4a) Of the above claim(s) is/are withdrawn from consideration.					
5)	5) Claim(s) is/are allowed.					
6)🖂	6)⊠ Claim(s) <u>3-7,9,10</u> is/are rejected.					
7)	Claim(s) is/are objected to.					
8)□	Claim(s) are subject to restriction and/o	or election requirement.				
Applicat	on Papers					
9)□	The specification is objected to by the Examin	er.				
•	10) ☐ The drawing(s) filed on is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.					
, —	Applicant may not request that any objection to the					
	Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).					
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.						
Priority under 35 U.S.C. § 119						
	-	n priority under 25 H.S.C. \$ 110(a)) (d) or (f)			
	2) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).					
a)	a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received.					
	2. Certified copies of the priority documents have been received in Application No					
	3. Copies of the certified copies of the priority documents have been received in this National Stage					
application from the International Bureau (PCT Rule 17.2(a)).						
* See the attached detailed Office action for a list of the certified copies not received.						
Attachment(s)						
1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413)						
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date 5) Notice of Informal Patent Application						
Paper No(s)/Mail Date 6) Other:						

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DETAILED ACTION

1. Applicant's Response to Office Action, received 14 April 2008, is acknowledged. Claims 3, 4, 7, 9, and 10 have been amended. Claims 2 and 8 have been canceled.

2. Claims 3-7, 9 and 10 are pending and under consideration.

Rejections Moot or Withdrawn

3. The rejection of claims 2 and 8 under 35 U.S.C. 103(a) as being unpatentable over Reed et al (WO98/16645, 23 April 1998), is moot in light of the cancellation of the claims.

Rejections Maintained

4. The rejection of claims 3-7, 9 and 10 under 35 U.S.C. 103(a) as being unpatentable over Reed et al (WO98/16645, 23 April 1998), is

Applicant argues that one of skill in the art would not be motivated to: (1) select the specific amino acid sequence described in Reed et al out of the extensive list of 209 possible sequence choices; and the (2) incorporate a DNA sequence encoding the amino acid sequence into a vector, cell, or composition as presently claimed. In addition, applicant argues that Reed et al mention SEQ ID NO: 110 only once, without a description of its function, use, or characteristics.

The examiner has considered applicant's arguments, but does not find them persuasive. The claims are drawn to a product, i.e., DNA, vectors and cells comprising said DNA. Reed et al do teach the claimed sequence of MTBN4, SEQ ID NO:110, and an isolated DNA comprising the DNA which encodes SEQ ID NO:110. In addition, Reed et al do teach vectors and host cells comprising DNA. Thus, it would have been obvious to utilize the specific DNA encoding SEQ ID NO:110 for production of vectors and host cells.

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Conclusion

5. No claims are allowed.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rodney P. Swartz, Ph.D., Art Unit 1645, whose telephone number is (571) 272-0865. The examiner can normally be reached on Monday through Wednesday from 9:00 AM to 7:30 PM EST. Thursday is the examiner's work at home day.

If attempts to reach the Examiner by telephone are unsuccessful, please contact the Examiner's Supervisors, Shannon Foley (571)272-0898, and Robert B. Mondesi (571)272-0956.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Rodney P. Swartz, Ph.D./

Primary Examiner, Art Unit 1645

September 3, 2008